



RAVALLI COUNTY ATTORNEY

205 Bedford Street, Suite C, HAMILTON, MT 59840-2853
Phone (406) 375-6750 Fax (406) 375-6731

TO: Commissioners ✓
CC: Commissioner Chilcott
FROM: Alex Beal, Deputy AB
DATE: June 7, 2007
RE: Public request for sources of information

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Ravalli County Commissioners

Commissioner Chilcott has requested that I clarify what duties exist to the public regarding the release of the names of people he may have communicated with prior to his drafting the Commission's request for an Attorney General's opinion. As set forth below, I do not believe that there is a legal duty to disclose that information.

As you are well aware, Montanans have a right to view the operation of their government as well as to participate in it. These rights are enshrined in our State Constitution, Art. II, §§ 8-9, as well as MCA § 2-3-111 and 2-3-203, and other statutes. These rights and obligations are clarified by MCA § 2-3-112, as well as 2-3-203 itself. The right of public participation does not extend to a Commissioner's "decision that must be made to maintain or protect the interests of the [county], including but not limited to the filing of a lawsuit in a court of law or becoming a party to an administrative proceeding; or a decision involving no more than a ministerial act." MCA § 2-3-112(2,3) (2005). The public's right to know does not trump an individual's right to privacy, nor does it trump the government's right to closed-door litigation strategy in cases involving private entities. As I have noted recently, as County Commissioners, you have no right to privacy in your official actions, nor any right to protect the identity of constituents with whom you speak on official matters should there be any valid reason to compel them.

The Montana Supreme Court has made clear, over and over again, that the proceedings of public boards must be open to the public. The public must have reasonable access to the calendar, and the right to attend and voice their views at board meetings. The key theme in all of these court decisions is the public's right to know how their government is reaching decisions. A request for an AG's opinion, however, is not a decision of the same sort discussed in those cases. A request for an AG's opinion is a request for a decision. One of the Attorney General's jobs is to provide an opinion to County Commissioners of any law relating to their offices, in writing, upon their request. MCA § 2-15-501 (7). My office has never required you to hold a public meeting before requesting an opinion from us, nor have we ever asked if your request is made

on behalf of someone else—nor do I ever anticipate our doing so in the future. Similar to the AG, we are required, pursuant to MCA § 7-4-2711, to give you our opinion without fee when you (as a body) seek it. Additionally, we regularly do so in response to requests from individual Commissioners and department heads.

Though a request for an AG's opinion is necessarily accompanied by a suggestion as to what that opinion should be, the decision of what opinion to issue is entirely left to the duly elected Attorney General, or his designee. I do not believe such a request constitutes a ministerial act, because there is clearly discretion involved. However, I do not believe it constitutes an "act" as contemplated by the above statutes. It has no lasting or final force or effect. It is in fact a request for an "act" from another person altogether

More to the point, you (individually) are not the Commission. If the Commission had met, as a quorum, and requested information from any person or group, this would likely have required a public meeting and thus disclosure of everyone present. The preparation that individual commissioners take prior to a public meeting does not require the same scrutiny that the meeting itself does. If you had to determine and disclose all sources that influenced your decision on most matters, the list would likely reach absurd proportions.

The request for an AG's opinion is a legislative act (as distinct from a quasi-judicial one). The commission is not deciding the outcome of an individual question, such as approval or denial of a subdivision, but rather involved in larger questions of policy. The prohibition against ex-parte communications does not exist—there are no parties. Just as our State's legislators may chat with whomever they wish before their votes, you may do so as well when you are wearing your legislative hat. I am not aware of any law compelling a legislator to name anyone who has helped him draft a bill, or suggested how he vote. The current situation is very much analogous to that as well.

Let me be clear: my opinion today does not address all aspects of whether you should or should not answer the public's request for this information, but merely the extent of your legal requirements. From a practical standpoint, the more the inner workings of government remain hidden, even if legally so, the more the governed distrust and are dissatisfied. There are times when this is a necessary evil. Only you can decide if this is such a time.